United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

To be argued by
EDWARD H. SIDDENS

76-1036

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

FREDERICO G. RANDACCIO,
Defendant-Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK.

BRIEF FOR PLAINTIFF-APPELLEE

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BRIEF FOR PLAINTIFF-APPELLEE

STATEMENT OF FACTS

The Petitioner-Appellant in this 28 U.S.C. 2255 proceeding, Frederico G. Randaccio, was originally charged in a two count indictment filed August 18, 1967 with violation of 18 U.S.C. §1951, conspiring to commit a robbery which would affect commerce, and 18 U.S.C. §371, conspiring to transport stolen goods in interstate commerce. Randaccio, along with four co-defendants, was tried before the late Hon. John O. Henderson in the United States District Court for the Western District of New York and, on November 21, 1967, was convicted by a jury on both counts. On December 11, 1967, Judge Henderson sentenced Randaccio to a term of twenty years imprisonment under the first count of the indictment and five years imprisonment under the second count of the indictment, the terms to run concurrently.

Prior to the trial, the Government advised the defendants that certain conversations of the defendants had been intercepted by electronic surveillance. One such surveillance raised a possible alibi defense for Randaccio. This information was transmitted to the jury by way of a stipulation. United States v. Caci, 401 F.2d 664, 669 (1968). A post-trial hearing on a possible "taint" from the

electronic surveillance was held. The defense was allowed to review the surveillance logs for February of 1965, which was the relevant time period in the instant indictment. The Second Circuit on direct appeal affirmed Randaccio's conviction. United States v. Caci, 401 F.2d 664 (1968) (which summarizes the proof at trial).

In Giordano v. United States, 394 U.S. 310 (1969), the Supreme Court remanded Randaccio's case for further proceedings as to a possible "taint" from illegal electronic surveillance in conformity with its decision in Alderman v. United States, 394 U.S. 165 (1969). Alderman required that an "aggrieved party" have access to all illegally intercepted conversations, without an in camera inspection to screen the intercepted conversations for relevancy. Once the conversations were turned over, an evidentiary hearing was to be held to determine if the evidence in the case had been or would be the "fruits" of the illegal electronic surveillance. Applying Alderman to Randaccio's case meant that the determination by Judge Henderson that only the relevant February, 1965 logs should be turned over was improper. Instead, Alderman commanded that all logs where a person was overheard or had a proprietary interest in the premises electronically surveilled should be turned over for inspection in order to allow the defense to litigate possible "taint".

Following the remand, on June 16, 1969, Judge Henderson ordered the Government to disclose all electronic surveillance involving Randaccio to his defense counsel (see Exhibit A attached hereto). On August 27 and 28, 1969, Judge Henderson held an evidentiary hearing, pursuant to Alderman and Giordano, and found no "taint" in the instant case. Randaccio appealed claiming that the electronic surveillance, while not showing any "taint", constituted newly discovered evidence in support of an alibi defense. The trial court's denial of this motion was affirmed. United States v. Randaccio, 440 F.2d 1337 (2nd Cir. 1971).

Some four years later, Pasquale Natarelli, a co-defendant of Randaccio, appealed a denial of his 28 U.S.C. §2255 application to the Second Circuit. The Second Circuit decided in Natarelli v. United States, 516 F.2d 149 (1975) that the imposition of separate but concurrent sentences for two conspiracy counts which constituted one conspiratorial episode was in violation of Braverman v. United States, 317 U.S. 49 and that this claim was cognizable under either 28 U.S.C. §2255 or Rule 35 F.R.Cr.P. Natarelli v. United States, 416 F.2d at 152 n.4. Natarelli's case was remanded for resentencing.

Subsequently, the instant §2255 proceeding was commenced by notice of motion and affidavit dated September 6, 1975 (App. 1 and 6). It sought resentencing in accordance with Natarelli. On December 1, 1975, the Honorable Harold P. Burke, United States District Judge, issued an Order without objection by the Government vacating Randaccio's sentence under authority of Natarelli v. United States, supra, and ordering that he be brought before the court for resentencing on December 22, 1975.

On December 22, 1975, Harold J. Boreanaz, Esq., counsel for Randaccio, filed with the District Court his own affidavit raising, for the first time, the issue that the conviction was tainted by electronic surveillance not heretofore disclosed. (App. 7-11) The Court, on December 22, 1975, granted an adjournment until December 24, 1975.

The Government, through James W. Gresens, then a Department of Justice Attorney, submitted on December 23, 1975 a written response requesting that the Court deny any further adjournment or relief in regard to electronic surveillance and that resentencing take place as soon as possible. (App. 17-21)

On December 24, 1975, Mr. Boreanaz filed another affidavit in support of his original affidavit. (App. 22-26) That same day, Judge Burke denied appellant's request for a further adjournment as well as the request for disclosure of all electronic surveillance. Judge Burke then resentenced Randaccio to a term of imprisonment of twenty years effective December 11, 1967. (App. 27-44)

Randaccio now appeals to this Court from the decision rendered by the District Court on December 24, 1975.

ISSUES PRESENTED

1. Did the District Court abuse its discretion in refusing to adjourn the proceedings initiated by Randaccio when he attempted to raise a new issue on the date of resentencing when his counsel had full knowledge of that issue prior to the initiation of the §2255 proceeding.

2. Did the affidavits of December 20 and 24, 1975 state sufficient facts to require the Court to hold a hearing on the illegal electronic surveillance issue belatedly raised by Randaccio.

3. Did the District Court improperly curtail counsel's right to be heard upon sentence.

POINT I

THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN PROCEEDING TO RESENTENCE RANDACCIO AS IT WAS REQUIRED TO DO UNDER NATARELLI V. UNITED STATES, SUPRA, DESPITE A LAST MINUTE ATTEMPT TO RAISE AN ISSUE RELATED TO THE VALIDITY OF THE CONVICTION.

Randaccio was in the same position as Natarelli. Since Natarelli controlled Randaccio's situation, the Government did not oppose a resentencing. Order of Re-sentence, December 1, 1975 (App. 5). On the day scheduled for resentencing, however, Randaccio's attorney, Harold Breanaz, Esq., filed an affidavit which for the first time alleged that there was additional electronic surveillance not disclosed by the Government at the August 27 and 28, 1969 "taint" hearing. See paragraph 12, Supporting Affidavit on Behalf of Randaccio dated December 20, 1975 (App. 7-11)

At the proceedings on December 22, 1975, the Government took the position that under the District Court's Order the issue before the Court was resentencing, not electronic surveillance. See Proceedings of December 22, 1975 (App. 15). Nevertheless, the Court granted a two-day

continuance until December 24, 1975 to allow for the Government to respond in writing and to allow Mr. Boreanaz additional time to review the materials submitted by the Government.

Mr. Boreanaz, on December 24, 1975, filed another affidavit which stated that the allegedly additional electronic surveillance to which his earlier affidavit referred had been conducted at the Memorial Chapel and Camilia Linen Supply both located at Niagara Falls, New York. Mr. Boreanaz stated that he knew this because he had seen logs of these electronic surveillances during his participation in the case of United States v. Magaddino, CR. NO. 1968-196 (W.D.N.Y.), which culminated in May of 1973. This affidavit established that whatever information Mr. Boreanaz had concerning the electronic surveillance had been known by him since before May of 1973. No explanation has been advanced as to why the alleged issue was not raised seasonably.

On December 24, 1975, Judge Burke denied requests for further adjournments and for a hearing on the electronic surveillance issue. The Court stated that the proceeding concerned only the resentencing of Randaccio as required by Natarelli and as requested by the Petitioner. (App. 45)

On this appeal Randaccio claims that this ruling was a denial of his rights under 28 U.S.C. §2255.

28 U.S.C. §2255 was originally passed to meet practical problems in administering habeas corpus jurisdiction. §2255 applications are brought in the sentencing court as opposed to habeas corpus applications which are brought in the place of custody. United States v. Hayman, 342 U.S. 205 (1952). The right to collateral attack under §2255 is the same as under 28 U.S.C. §2254, the general habeas corpus statute. See, Davis v. United States, 417 U.S. 333, 94 S.Ct. 2298 (1974); United States v. Hayman, supra, 342 U.S. at 217. §2255 requires that a hearing be held "unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." 28 U.S.C. §2255.

The district court should first review the application to see if it alleges facts upon which relief may be based. If it does, then the court should look to the record to see if it shows conclusively that the claim is without merit. These initial considerations are in the sound discretion of the district court. "The language of the statute does not strip the district courts of a

discretion to exercise their common sense." Machibroda v. United States, 368 U.S. 487, 495, 82 S.Ct. 510, 514 (1962); and see Sanders v. United States, 373 U.S. 1, 18-19, 83 S.Ct. 1068, 1079 (1963). Even when a hearing is called for, the district court still exercises discretion in determining the nature of the hearing and whether the applicant needs to be present. Machibroda v. United States, supra. While the hearing requirements of 28 U.S.C. 2255 are stringent where the petition is supported by sufficient factual allegations, the statute does not deal with the present procedural situation where, after granting the relief sought in the initial application, the petitioner attempts to raise wholly new issues.

Wagner v. United States, 374 F.2d 86 (9th Cir. 1967) did deal with a procedural question somewhat similar to that of Randaccio. There the petitioner's initial §2255 application was denied as conclusory without a hearing. A request for reconsideration which raised new grounds was also summarily denied. The Ninth Circuit in affirming stated that the district court could not reconsider that which it had not considered before. The Court indicated that the proper course of action was to proceed by a separate motion. The petitioner did file a new petition which was also summarily

denied. This decision was reversed because the petition alleged sufficient facts to entitle the prisoner to a hearing. Wagner v. United States, 418 F.2d 618 (9th Cir. 1969).

Randaccio's initial application was granted, but his last minute purported amendment raising new grounds was denied. Following the rationale of Wagner, the appropriate remedy would be to file a separate §2255 application raising the new grounds. See, Stephens v. United States, 246 F.2d 607 (10th Cir. 1957).

In the instant case, Judge Burke exercised his discretion in a proper fashion. The initial application had requested resentencing. On the day set for resentencing, Randaccio attempted to litigate an entirely new claim not dealing with the sentence but rather attacking the validity of the underlying conviction. The affidavits of December 20 and December 24 were conclusory in nature (see infra). The possible "taint" from electronic surveillance had been extensively litigated at the original trial and at subsequent proceedings. Mr. Boreanaz stated that the material he was attempting to question was at least 70,000 pages long (App. 25). Randaccio's request was really two-pronged: Was all electronic

surveillance material turned over in 1969; and, if not, could a "taint" be demonstrated. To properly decide these issues would require an inordinate delay. The Government's case against Randaccio was based solely on the testimony of Pasquale Calabrese (App. 8) and not on electronic surveillance. Therefore, the likelihood of proving "taint" was minimal. No explanation was ever advanced as to why these belated claims were not included in the initial application. Concomitant with the attendant delay and unlikelihood of success was the fact that Randaccio was entitled to be resentenced and was then present before the district court to effectuate that purpose.

Based upon all of these facts and after careful consideration, the Court exercised its discretion in a most logical and judicious fashion and decided to proceed with resentencing and not to consider the attack on the conviction or to allow inordinate continuances. Even if the affidavits of December 20 and December 24 were sufficient to call for a hearing, a conclusion the Government strongly contests, it was no abuse of discretion, due to the untimely filing and likelihood of delay, for Judge Burke to go forward with the resentencing.

The Government respectfully submits that the district court properly exercised its discretion in not considering claims not timely brought before it and that such discretion is essential to the proper and orderly administration of justice in the federal court system. Far from being an abuse of discretion, the procedure followed by the district court should be held correct and proper in all respects.

POINT II

THE AFFIDAVITS OF DECEMBER 20 AND DECEMBER 24 DID NOT ALLEGE SUFFICIENT FACTS TO REQUIRE A HEARING.

Not every error of law may be successfully asserted in proceedings under §2255. The error must be a fundamental one which inherently results in a complete miscarriage of justice. Davis v. United States, 417 U.S. 333, ___, 94 S.Ct. 2298, 2305 (1974); Hill v. United States, 368 U.S. 424, 82 S.Ct. 468 (1962).

It is clear that the application for relief must allege facts which, if proven true, would entitle petitioner to relief. Williams v. United States, 503 F.2d 995 (2nd Cir. 1974)(conclusory and palpably false allegations do not require a hearing); D'Ercole v. United States, 361 F.2d 211 (2nd Cir. 1966)(hearsay affidavit alleging perjured testimony not sufficient to require a hearing); United States v. Catalano, 281 F.2d 184 (2nd Cir. 1960)(mere hearsay allegation not sufficient).

The Second Circuit has said that when a prisoner raises an issue which would require a new trial if factually sustained and presents a sufficient affidavit in support of his contention, a hearing is necessary unless the files and records show

conclusively that the prisoner is entitled to no relief. Taylor v. United States, 487 F.2d 307 (2nd Cir. 1973). Similarly, there is no question that claims involving use of unconstitutionally seized evidence are cognizable in a proceeding under §2255. Kaufman v. United States, 394 U.S. 217, 89 S.Ct. 1068 (1969). A factually sufficient affidavit is essential to trigger the relief process. The court can properly exercise its discretion in summarily denying a petition when the affidavit is insufficient on its face. Dalli v. United States, 491 F.2d 758 (2nd Cir. 1974).

The issues in Dalli are similar to those in Randaccio's case. Dalli was charged with drug violations. A pretrial evidentiary hearing was held to determine if his arrest and subsequent search were the fruits of an illegal State wiretap. The Government maintained that its investigation and arrest were independent of the State wiretap. The trial court concluded there was no "taint". Dalli was then tried and convicted. Some three years later, he sought relief by a §2255 petition supported by an affidavit of a former New York State Police lieutenant who participated in the State wiretap at issue. The District Court denied the petition without a hearing. In affirming, the Second Circuit reviewed the affidavit and found that the allegations as to actual use by Federal Agents of the State wiretap to be

vague and conclusory. Id. at 761. The affidavit stated that the affiant had learned that the State's wiretaps were routinely discussed with a member of the Bureau of Narcotics and Dangerous Drugs on a daily basis. The Court pointed out that the affiant did not state how or from whom the affiant learned this. Id. The affidavit also alleged that there were undisclosed wiretaps. The Second Circuit stated that even if this were correct the affiant could not aver that any information was turned over to the Federal Agents and this was the key issue. Therefore, the Court affirmed the denial of the petition without a hearing.

Another recent case dealing with the sufficiency of supporting affidavits is United States v. Franzese, 525 F.2d 27 (2nd Cir. 1975). There, the District Court denied without a hearing a §2255 motion supported by several affidavits, the thrust of which was that the Government had knowingly used perjured evidence. The Second Circuit affirmed holding that the affidavits did not make out a sufficient claim of prosecutorial suppression. The basis for this holding was that despite the many factual allegations of perjured testimony, the affidavit did not state, except in conclusory fashion, that the Government knew of the alleged perjury. Id. at 31-32.

It may be noted that Randaccio has at all times been represented by capable counsel. The District Court was not dealing with the petition of a prisoner with limited education and no access to counsel, as is so often the case in §2255 proceedings.

Mr. Boreanaz' affidavits of December 20 and December 24, like those in Dalli and Franzese, clearly fall short of alleging any facts which would call for a hearing. The essence of the December 20, 1975 affidavit (App. 7) is found in paragraphs 12 and 13. These paragraphs state that Mr. Boreanaz has "now discovered" that there was electronic surveillance other than that conducted at 51 Essex Street and that upon "information and belief" the Government has not disclosed these surveillances to anyone. This affidavit totally failed to state any facts which would identify when or where this "other" electronic surveillance was conducted. It failed to identify what electronic surveillance material had been made available to Randaccio in preparation for the "taint" hearing in 1969; and upon what facts or in what respect Mr. Boreanaz based his belief that the Government had not followed the Order of Judge Henderson (as set forth below) to turn over all electronic surveillance material pursuant to the Supreme Court's instructions in Giordano and Alderman.

In the affidavit of December 24, 1975 (App. 22), Mr. Boreanaz specified which surveillances he referred to, i.e., surveillances conducted at the Memorial Chapel and Camilia Linen Supply. He stated that he learned that Randaccio had been intercepted on these electronic surveillances in the course of his participation in the Magaddino case in 1973. This affidavit stated that Randaccio was overheard on the two surveillances during a time period prior to his trial. The Government submits that were this a case where the Government had denied that any electronic surveillance had taken place, a hearing would be necessary to determine the truth of the allegations and whether any "taint" existed. That, however, is not the case here. The Government admitted prior to the original trial that Randaccio had been intercepted by electronic surveillance. At trial, the Government contended that the Court should review the interceptions and turn over relevant material. The trial Court did this.

In Alderman, the Supreme Court decided that only the defense could determine the relevancy of intercepted communications and therefore all interceptions should be turned over. Giordano remanded Randaccio's case for a hearing on "taint" with instructions that Alderman was to be followed. Pursuant to the mandate of the Supreme Court, on June 16, 1969,

Judge Henderson entered an order (attached hereto as Exhibit A and incorporated by reference herein) which stated in part:

> "ORDERED that the Government on this date furnish Herald P. Fahringer, Jr. and Frank G. Raichle, counsels for petitioner Frederico Randaccio, copies of the transcripts of all conversations occurring in the presence of Frederico Randaccio and any and all conversations which took place on any premises of which he was the owner, lessee or licensee, obtained as a result of unlawful electronic surveillance by the Government; . . ."

This Order was comprehensive. Subsequently, on August 27 and 28, 1969, a hearing was held on the "taint" issue and relief was denied. There is not one fact alleged in any affidavit filed by counsel for appellant that the Government did not comply fully with this Order. Indeed, Mr. Boreanaz who was not counsel for Randaccio at the original trial, does not state he has contacted or even attempted to contact Mr. Fahringer or Mr. Raichle, who represented Randaccio at the original trial and in the Giordano proceeding, concerning what was turned over for their inspection. Moreover, Mr. Boreanaz' affidavits do not reveal whether he even asked his client, Randaccio, whether these "other" electronic surveillances were disclosed.

At best, the affidavits in this case say no more than that the Government was ordered to turn over all electronic

surveillances but that the affiant believes that the Government did not comply and therefore a hearing should be held. Thus, the affidavits take the position that the Government is presumed to have acted in bad faith and to have violated the District Court's express order. The presumption is to the contrary -- public officers are presumed to discharge their duties according to law. See, Chaney v. United States, 406 F.2d 809, 813 (5th Cir. 1969); Der Garabedian v. United States, 372 F.2d 697 (5th Cir. 1966); United States v. Gleason, 265 F.Supp. 880, 885 (S.D.N.Y. 1967); United States v. Isaacs, 351 F.Supp. 1323, 1329 (N.D. Ill. 1972). Like the affidavits in Dalli and Franzese, which were held insufficient, this affidavit fails to allege one fact which would suggest that the Government failed to disclose all electronic surveillance material at the August 1969 hearings. Mere conclusory allegations will not suffice. See, Dalli v. United States, Supra, 503 F.2d 995 (2nd Cir. 1975); United States v. Catalano, F.2d 184 (2nd Cir. 1960); Holland v. United States, 406 F.2d 213 (5th Cir. 196[illegible]. Moreover, where a full hearing has once been held on an issue, even greater specificity is required in a §2255 affidavit. Dalli v. United States, 491 F.2d 758, 761 (2nd Cir. 1974).

Since the instant affidavits failed to sufficiently allege facts which would entitle Randaccio to a hearing, this Court should affirm the District Court's denial of a hearing.

POINT III

COUNSEL WAS NOT PRECLUDED FROM BEING HEARD UPON SENTENCE.

Contrary to Randaccio's assertion, Judge Burke did not curtail counsel's right to be heard upon sentence. (Appellant's Brief 10-13). The record clearly demonstrates that counsel for Randaccio had been supplied with a copy of the presentence report and updated materials which the Government supplied for the Court's consideration on resentence. (App. 13, 32-34 and 41-43). During the proceedings of December 24, Mr. Boreanaz directed the Court's attention to areas of the presentence report which were favorable to Randaccio and he stated additional facts where he felt the presentence report was inadequate. Further, Randaccio personally addressed the Court. (App. 39-41)

At no time did Mr. Boreanaz attempt to introduce evidence to contradict the presentence report. Rather, he stated that he did not agree and "hotly contest[ed]" the material. (App. 41)

Sentencing courts have broad discretion in receiving information for purposes of determining sentence. United States

v. Tucker, 404 U.S. 443, 92 S.Ct. 589 (1972). Resentencing is required only if the information before the Court was materially incorrect. The burden of showing inaccuracy is on the defendant. United States v. Rollerson, 491 F.2d 1209 (5th Cir. 1974); see, Adams v. United States, 317 U.S. 269, 281, 63 S.Ct. 236, 242 (1942).

Mr. Boreanaz claims that a defendant is entitled to attack the information supplied to the Court. (Appellant's Brief 11) The Government does not dispute this right. But, Randaccio took full advantage of this right both personally and through counsel on December 24. Judge Burke did not in any way preclude Randaccio from presenting evidence which would bear on the sentencing decision. Even now Mr. Boreanaz does not state what, if any, information in the presentence report he disputes.

In support of his position Randaccio cites Crovedi v. United States, 517 F.2d 541 (7th Cir. 1975) and United States v. Janiec, 464 F.2d 216 (3rd Cir. 1972). Both of those cases dealt with the disclosure of the prior conviction portion of a presentence report. Here the Government has supplied the entire presentence report. Thus Crovedi and Janiec have no application to the current situation.

One can but wonder how much more opportunity to controvert Randaccio feels he is entitled to. The record is clear -- neither he nor his counsel were precluded.

CONCLUSION

In the final analysis Randaccio obtained all the relief to which he was entitled. He has failed to raise meritorious issues on this appeal. And, therefore, the judgment of the District Court should be affirmed.

Respectfully submitted,

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Western District of New York

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EXHIBIT "A"

1a

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA vs. FREDERICO G. RANDACCIO PASQUALE NATARELLI	Criminal No. 1967-115

ORDER

In view of the decision of the Supreme Court of the United States in the Giordano case of March 24, 1969, which remanded this case for further proceedings in conformity with Alderman v. United States, Ivanov v. United States and Butenko v. United States, 37 U.S. L.W. 4189, it is by the Court this 16th day of June, 1969,

ORDERED that the Government on this date furnish Herald P. Fahringer, Jr. and Frank G. Raichle, counsels for petitioner Frederico Randaccio, copies of the transcripts of all conversations occurring in the presence of Frederico Randaccio and any and all conversations which took place on any premises of which he was the owner, lessee or licensee, obtained as a result of unlawful electronic surveillance by the Government; and it is further

ORDERED that the Government on this date furnish Salten Rodenberg, Esq., counsel for petitioner Pasquale Natarelli, copies of the transcripts of all conversations occurring in the presence of Pasquale Natarelli and any and all conversations which took place on any premises of which he was the owner, lessee or licensee, obtained as a result of unlawful electronic surveillance by the Government; and it is further

ORDERED that defense counsels Herald P. Fahringer, Jr. and Frank G. Raichle, and their client, Frederico Randaccio, shall not make those records of conversations furnished to them by the Government available to any other person for any purpose, nor shall they make any copies of said records; and it is further

ORDERED that defense counsel, Salten Rodenberg, Esq., and his client, Pasquale Natarelli, shall not make those records of conversations furnished to them by the Government available to any other person for any purpose, nor shall they make any copies of said records; and it is further

ORDERED that on or before July 16, 1969, the defendants, through their attorneys, designate in writing to the Government and to the Court those conversations in the aforesaid material which the defendants deem relevant to the charges in the indictment in this case; and it is further

ORDERED that this matter be set for hearing before this Court on July 21, 1969, at which time opportunity will be afforded the said defendants to demonstrate the possible relevance between aforesaid material and the charges in the indictment in this case.

John O Henderson

JOHN O. HENDERSON
United States District Judge

AFFIDAVIT OF SERVICE BY MAIL

State of New York)
County of Genesee) ss.:
City of Batavia)

RE: USA
vs
Frederico G. Randaccio

I, Leslie R. Johnson being duly sworn, say: I am over eighteen years of age and an employee of the Batavia Times Publishing Company, Batavia, New York.

On the 13th day of April, 19 76 I mailed _____ copies of a printed Brief in the above case, in a sealed, postpaid wrapper, to:

25 copies to: A. Daniel Fusaro, Clerk
U.S. Court of Appeals, 2nd Circuit
New Federal Court House
Foley Square
New York, N.Y. 10007

2 copies to: Harold Boreanaz, Esq.
736 Brisbane Bldg.
Buffalo, N.Y. 14203

at the First Class Post Office in Batavia, New York. The package was mailed Special Delivery at about 4:00 P.M. on said date at the request of:

Edward H. Siddens, Dept. of Justice Attorney
Organized Crime & Racketeering Section,
921 Genesee Bldg., Buffalo, N.Y. 14202

Leslie R Johnson

Sworn to before me this

13th day of April, 19 76

Patricia A. Lacey

PATRICIA A. LACEY
NOTARY PUBLIC, State of N.Y., Genesee County
My Commission Expires March 30, 19 77